IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 28166 of 2004(C)

EP.5/2004 of SUB COURT, PALA.

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PETITIONER:

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1. D.PRASAD, BHAKTHI VILAS,
RAMAPURAM, KOTTAYAM DISTRICT.

2. D.RAJESH, RESIDING DO.

3. P.K.THANKAMMA, RESIDING AT DO.

4. K.G.DAMODARAN NAIR, RESIDING AT DO.

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENTS:

THE MEENACHIL CO-OPERATIVE AGRICULTURAL RURAL AND DEVELOPMENT BANK LTD.NO.197, PALA, KOTTAYAM DISTRICT, REP.BY ITS SECRETARY C.S.XAVIER.

BY ADV. SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.R.RAJEEV
SRI.SUNIL CYRIAC,SC,MEENACHIL CO-OP.ARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.28166/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER ISSUED BY THE RESPONDENTDT.20.11.97.

EXT.P2:- COPY OF THE E.P.5/04 FILED BY THE RESPONDENT BEFORE THE SUB COURT, PALA DT.23.1.04.

EXT.P3:- COPY OF THE OBJECTION FILED BY THE 1ST PETITIONER DT. 24.5.04.

EXT.P4:- COPY OF THE PETITION FILED BY THE PETITIONERS DT.17.8.04.

EXT/P5(a):- COPY OF THE RECEIPT DT.1.6.99.

EXT.P5(b):- COPY OF THE RECEIPT DT.30.3.99.

EXT.P5(c):- COPY OF THE RECEIPT DT.11.6.99.

EXT.P5(d):- COPY OF THE RECEIPT DT.30.6.99.

EXT.P5(e):- COPY OF THE RECEIPT DT.2.2.99.

EXT.P5(f):- COPY OF THE RECEIPT DT.26.11.97.

EXT.P5(h):- COPY OF THE RECEIPT DT.5.1.98.

EXT.P6:- COPY OF THE SANCTION LETTER ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE DT.10.1.2000.

/TRUE COPY/

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K.P.BALACHANDRAN, J.

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W.P.(C)NO.28166 OF 2004

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Dated this the 12th day of February 2007

JUDGMENT

The petitioner who is the judgment debtor in E.P.5/2004 in C.R.B.No.4924/2000 before the Sub Court, Pala has filed this writ petition wherein the prayers are the following:

> "i) Issue a writ of certiorari or any other writ or direction quashing all the further proceedings in E.P.No.5/2004 before the Sub Court Pala in C.R.B.No.4924/2000.
>
> ii) Issue a direction to adjourn the delivery of property, giving the petitioners a reasonable time to repay the balance loan amount in instalments.
>
> iii) Such other appropriate writ or order or direction this Honourable Court may deem fit and proper in the facts and circumstances of the case."

2. Pursuant to orders passed by this court on 25.9.2004 and 29.11.2004, it is submitted by the petitioner and the respondent that an amount of Rs.1,00,000/- has been paid by the

petitioner towards the decree debt to the respondent Bank. This was done before 23.1.2005. Thereafter, not a paisa is paid by the petitioner for the last two years. It is submitted by the counsel for the petitioner that there was an oral direction by this court to the respondent Bank to file a statement of the amounts due after granting the petitioners all possible deductions and deleting penal interest. The submission so made is not borne out by any order passed by this court. However, the respondent can file the statement and the petitioner can file objection to the said statement in case that statement does not show the correct amount due to the respondent Bank. All that has to be done before the Execution Court and not before this court. More than reasonable time has been granted by this court and the relief petitioner wanted was only reasonable time to pay off the debt. Whatever be the dispute with respect to the exact amount due, it is not in dispute that a few lakhs is also due to the respondent bank. The counsel for the petitioner submits that the petitioners are prepared to pay at the rate of Rs.25,000/- per month without default till the debt is cleared to which counsel for the

respondent also is agreeable provided default clause is also incorporated. In the circumstances, I direct that the petitioner shall pay to the respondent Bank Rs.25,000/- each per month on or before the 20th of each calendar month beginning with 20.2.2007. In case payment of any instalment is defaulted, the delivery of the mortgaged property sold to the decree holder will take place. Any dispute with reference to the balance amount to be paid can be advanced before the Execution Court and got adjudicated. All the same, it is made clear that the debt as on the date of sale is the amount for which the sale was conducted.

With this direction this writ petition is closed.

K.P.BALACHANDRAN, JUDGE

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